

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of :
Kai Schiemann et al. : Group Art Unit.: 1614
Serial No.: 10/552,065 : Examiner: STONE, Christopher R.
Filed: October 5, 2005 :
Title: SUBSTITUTED PYRAZOLES

REPLY

Mail Stop: AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

SIR:

In response to the Office Communication mailed on June 8, 2009, please amend the claims as follows and consider the remarks.

The only rejection is the erroneous rejection under section 102, where allegedly compound 5 of Begtrup et al. anticipates the claimed invention. It appears that compound 4 was intended. Compound 4 therein has $R_3=R_4=H$, and $R_5=C_6H_5$.

However the Office Action appears to have missed the proviso in claim 1, i.e., "where in each case one of the radicals R^3 or R^4 has the meaning H," whereby this rejection is improper.

This proviso clearly excludes the compound of the prior art where both R^3 and R^4 have the meaning H.

Even under the broadest reasonable interpretation standard, one cannot reasonably interpret the claim language as including compounds where both R^3 and R^4 have the meaning H.

Please consider the following: "where in each case one of the radicals R_3 or R_4 has the meaning H" is deemed fully equivalent to "where in each case one of the radicals R_3 or R_4 has the meaning H" which is in turn deemed fully equivalent to the version with commas "where in each case one of the radicals, R_3 or R_4 , has the meaning H."

The "interpretation" where both of these R groups would be allowed to be H, could

only be correct, if the following wording would be given: "where in each case one of the radicals R3 and R4 has the meaning H."

It is clear that there really is, and was intended to be, a difference between the terms "and" and "or" which can be seen by the deleted/commas versions and the and version, i.e., "where in each case one of the radicals R3 and R4 has the meaning H" --> this would mean that in each case both R3 and R4 have the meaning H; then all the definitions of other than H would be obsolete, and "where in each case one of the radicals, R3 and R4, has the meaning H" --> this would render the proviso conflicting and thus unclear.

Accordingly, the term "or" is an operator with a well defined meaning and makes clear that according to the invention, in each molecule of the given structure at one time, only one of the radicals R3, R4 is H and the other one is selected from the organic radicals given in the respective definition, but is other than H.

Reconsideration is respectfully and courteously solicited.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

/Csaba Henter/

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Date: August 10, 2009

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